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THE HONORABLE ROBERT H. WHALEY

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUL 31 2000

**JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON**

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE**

GABRIEL ALVAREZ, VIRGINIA)
ALVAREZ, MARIA CHAVEZ,)
RANULFO GUTIERREZ, PEDRO)
HERNANDEZ, MARIA MARTINEZ,)
RAMON MORENO, and ISMAEL)
RODRIGUEZ, individually and as class)
representatives,)

Plaintiffs,)

v.)

IBP, INC., a Delaware corporation,)
Defendant.)

**CLASS ACTION
No. CT-98-5005-RHW**

**LR 56.1 STATEMENT OF FACTS
IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT DISMISSING
CERTAIN PLAINTIFFS' CLAIMS
AS INVALID AND SETTING
REMAINING PLAINTIFFS'
CLAIM PERIODS**

In support of Defendant's Motion for Summary Judgment Dismissing Certain
Plaintiffs' Claims as Invalid and Setting Remaining Plaintiffs' Claim Periods,
defendant IBP, inc. ("IBP") submits the following statement of material facts:

**LR 56.1 STATEMENT OF FACTS IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
DISMISSING CERTAIN PLAINTIFFS' CLAIMS - 1**

1 1. This case was brought as a Section 216(b) collective class action suit
2 under the Fair Labor Standards Act ("FLSA"). See Plaintiffs' Second Amended
3 Complaint for Minimum Wage Act and Fair Labor Standards Act Violations;
4 Stipulation re Class Certification, entered by the Court on June 11, 1999 ("Stipulation
5 re Class Certification").
6

7
8 2. In addition to the FLSA claims, plaintiffs' complaint includes alleged
9 violations of the Washington Minimum Wage Act and related state statutes. In the
10 Stipulation re Class Certification, the parties stipulated, and this Court ordered, that
11 the Court would take supplemental jurisdiction over all remaining state law claims as
12 part of the Section § 216(b) collective class action and that the collective class action
13 would not be treated as a class action under Fed. R. Civ. P. 23. Stipulation re Class
14 Certification, at pp. 2-5.
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17 3. Plaintiffs originally filed approximately 700 consent cards with the Court
18 – the "Pre-Notice Consents" – in groups filed with the Court on: August 10, 1998;
19 August 24, 1998; December 11, 1998; February 11, 1999; July 23, 1999; and
20 September 29, 1999. See Collective Class List Spreadsheet, attached as Exhibit A to
21 the Declaration of Ann Davidge Schovajsa ("Schovajsa Decl."); Court docket attached
22 as Exhibit B to Schovajsa Decl. (showing dates when plaintiffs' Pre-Notice Consents
23 were filed with the Court); consent card pleadings attached as Exhibit C to Schovajsa
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LR 56.1 STATEMENT OF FACTS IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
DISMISSING CERTAIN PLAINTIFFS' CLAIMS - 2

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1 Decl. (attaching a courtesy copy of the following pleadings without the attached
 2 consents: "Consent to be Party Plaintiffs"; "First Supplemental Consent to be Party
 3 Plaintiffs"; "Second Supplemental Consent to be Party Plaintiffs"; "Third
 4 Supplemental Consent to be Party Plaintiffs"; "Fourth Supplemental Consent to be
 5 Party Plaintiffs"; "Fifth Supplemental Consent to be Party Plaintiffs"; "Declaration of
 6 Judd Amberg: Reporting Interim Class Notice Responses;" and "Declaration of Judd
 7 Amberg: Final Report Regarding Class Notice Responses and Double Damages
 8 Responses").

11 4. The remaining notices and consent cards – the "Class Notice" – were sent
 12 out pursuant to this Court's approval. Prior to the Class Notice mailing, the Court
 13 specifically ordered that the parties "abide by the schedule set forth in the Stipulation
 14 re Class Certification." Order Granting Motion to Amend and Class Certification,
 15 entered on August 24, 1999, at p. 6.

18 5. The June 11, 1999 Stipulation re Class Certification provides that:

20 11. For any putative Class member to participate in this action as a
 21 member of the opt-in Class defined above, he/she must postmark their
 22 Opt-In Request Postcards within 120 days of the date Class counsel mails
 the Notice (the "Opt-In Deadline"). . . .

23 Stipulation re Class Certification, at p. 7.

24 6. Plaintiffs mailed the Class Notices on Friday, December 10, 1999. See
 25 letter from Judd Amberg dated December 13, 1999, attached as Exhibit A to the
 26 LR 56.1 STATEMENT OF FACTS IN SUPPORT OF
 DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
 DISMISSING CERTAIN PLAINTIFFS' CLAIMS - 3

1 Declaration of Douglas E. Smith in Support of Defendant's Motion for Summary
2 Judgment Dismissing Certain Plaintiffs' Claims as Invalid and Setting Remaining
3 Plaintiffs' Claim Periods ("Smith Decl.").
4

5 7. The opt-in deadline ("Opt-In Deadline") under the Stipulation re Class
6 Certification (the date by which the completed consent cards had to be postmarked
7 and returned) was therefore April 8, 2000. See Stipulation re Class Certification, at
8 p. 7; letter from Judd Amberg dated December 2, 1999, attached as Exhibit B to Smith
9 Decl.
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11 8. After April 8, 2000, plaintiffs were required to provide IBP with a copy
12 of all consent postcards, file all valid and timely consent postcards with the Court, and
13 provide a status report describing the final composition of the collective "class."
14 Stipulation re Class Certification, at p. 7.
15

16 9. Plaintiffs filed Class Notice consents with the Court through the
17 Declaration of Judd Amberg: Reporting Interim Class Notice Responses, filed on
18 April 26, 2000, and the Declaration of Judd Amberg: Final Report Regarding Class
19 Notice Responses and Double Damages Responses, filed on May 26, 2000. See
20 Exhibits B and C to Schovajsa Decl.
21

22 10. On May 19, 2000, plaintiffs forwarded to IBP three lists of names
23 allegedly representing the final composition of the collective class (the "Pre-Notice
24
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1 Consents,” the “Class Notice Consents” and the “No Jobber Consents”). See e-mail
2 correspondence from Judd Amberg dated May 19, 2000, attached as Exhibit C to
3 Smith Decl. IBP used the names on these lists to create the Collective Class List
4 Spreadsheet. Schovajsa Decl., at ¶ 2. All names for which plaintiffs were unable to
5 provide social security numbers have since been removed from the Collective Class
6 List Spreadsheet by agreement of the parties. Id.

9 11. The following named plaintiffs filed consents with the Court as part of
10 the first batch of Pre-Notice Consents filed on August 10, 1998: Virginia Alvarez and
11 Maria Chavez. See Exhibit A to Schovajsa Decl.; Exhibits E-G to Smith Decl.

13 12. The remaining named plaintiffs – Gabriel Alvarez, Ranulfo Gutierrez,
14 Pedro Hernandez, Maria Martinez, Ramon Moreno and Ismael Rodriguez – have not
15 filed consent cards with the Court. See Exhibit A to Schovajsa Decl.; Exhibits D and
16 H-L to Smith Decl.

18 13. The social security numbers for the two “Maria Martinez” listed on the
19 Collective Class List Spreadsheet – 539-11-4790 and 439-21-9466 – do not match the
20 social security number provided by named plaintiff “Maria Martinez” in either her
21 interrogatory responses or her deposition testimony – 560-02-6063. See Exhibits A
22 and D to Schovajsa Decl., at ¶ 5; deposition of Maria Martinez, at p. 7, attached as
23 Exhibit J to Smith Decl.
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1 14. During the deposition of named plaintiff Pedro Hernandez, defense
2 counsel showed Mr. Hernandez a copy of the consent card filed by plaintiffs that was
3 signed by "Pedro Hernandez" and asked Mr. Hernandez if that was his signature on
4 the card. Smith Decl., at ¶ 5 and Exhibit D. Mr. Hernandez testified that neither the
5 signature nor the address on the consent card was his, and that he did not file a consent
6 card with the Court. Id.

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9 15. The following is a list of absent class members who filed consent cards
10 with the Court that were postmarked after April 8, 2000: Shane V. Crosslin
11 (postmarked April 15, 2000); Esteban Garcia (postmarked on April 28, 2000);
12 Mohamud A. Hassan (postmarked on April 12, 2000); Rosa M. Moctezuma
13 (postmarked on April 10, 2000); Juana Munoz (postmarked on April 19, 2000);
14 Regino Sengchanh (postmarked on April 10, 2000); and Brandon Sherman
15 (postmarked on April 10, 2000). See Collective Class List Spreadsheet, Exhibit A to
16 Schovajsa Decl.

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19 16. The following is a list of absent class members who filed consent cards
20 with the Court after the April 8, 2000 Opt-In Deadline and for which there is no
21 postmark date on the consent cards: Farah Said Abdulahi (no postmark; filed with
22 Court on April 26, 2000); Jose J. Lira (no postmark; filed with Court on April 26,
23 2000); Valeriana Ocampo (no postmark; filed with Court on April 26, 2000); Patrick
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1 Stella (no postmark; filed with Court on April 26, 2000); and Salvador U. Rosales (no
2 postmark; filed with Court on April 26, 2000). See Collective Class List Spreadsheet,
3 attached as Exhibit A to Schovajsa Decl.
4

5 17. The remaining plaintiffs on the Collective Class List Spreadsheet, the
6 “opt-in plaintiffs,” are those plaintiffs listed in the Collective Class List Spreadsheet
7 who have a “YES” under the column entitled “Timely Consent?” See Schovajsa
8 Decl., at ¶ 5.
9

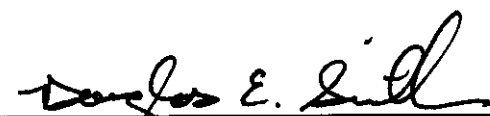
10 18. IBP prepared a chart using all of the dates on which plaintiffs filed
11 consent cards with the Court according to the Court’s docket. See Schovajsa Dec., at
12 ¶ 10. This chart sets the possible claim periods for each opt-in plaintiff according to
13 the date that the opt-in plaintiff filed his or her consent with the Court. Id. The
14 Collective Class List Spreadsheet provides a more detailed chart of each individual
15 opt-in plaintiff’s date of filing and applicable claim period. Id. The chart provides as
16 follows:
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	DATE PLAINTIFF FILED CONSENT WITH COURT (i.e., date plaintiff's claim commenced)	IF TWO YEAR STATUTE OF LIMITATIONS APPLIES – DATE CLAIM PERIOD COMMENCES (i.e., all plaintiff's claims prior to this date are barred by the two-year statute of limitations)	IF THREE YEAR STATUTE OF LIMITATIONS APPLIES – DATE CLAIM PERIOD COMMENCES (i.e., all plaintiff's claims prior to this date are barred by the two-year statute of limitations)
1.	August 10, 1998	August 10, 1996	August 10, 1995
2.	August 24, 1998	August 24, 1996	August 24, 1995
3.	December 11, 1998	December 11, 1996	December 11, 1995
4.	February 11, 1999	February 11, 1997	February 11, 1996
5.	July 23, 1999	July 23, 1997	July 23, 1996
6.	September 29, 1999	September 29, 1997	September 29, 1996
7.	April 26, 2000	April 26, 1998	April 26, 1997
8.	May 26, 2000	May 26, 1998	May 26, 1997

Id.

DATED this 28th day of July, 2000.

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